Supreme Court, U.S.
FILED
NOV 4 1985
JOSEPH F. SPANIOL, JR
CLERK

No. 85-359 (2)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

BEST AVAILABLE COPY

COUNTY OF WAYNE and WILLIAM LUCAS,
Petitioners,

-vs-

SALVATORE MARCHESE,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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19 pp

QUESTIONS PRESENTED

I. WAS THE COURT OF APPEALS CORRECT IN HOLDING THAT 42 U.S.C. §1983 CREATES AN ACTION FOR DAMAGES WHEN A PRISONER IS TWICE BEATEN SEVERELY WHILE IN THE CUSTODY AND COMPLETE CONTROL OF SHERIFF'S OFFICERS?

II. ASSUMING THE COURT OF APPEALS WAS CORRECT IN ANSWERING QUESTION I AFFIRMATIVELY, WAS THE COURT OF APPEALS CORRECT IN HOLDING THAT §1983 LIABILITY EXTENDS TO THE WAYNE COUNTY SHERIFF, EITHER BECAUSE OF THE SHERIFF'S FAILURE TO TRAIN AND DISCIPLINE HIS OFFICERS OR BECAUSE OF RATIFICATION OF THE ILLEGAL ACTS FOR FAILURE TO INVESTIGATE AND PUNISH THE INDIVIDUAL OFFICERS RESPONSIBLE FOR THE BEATINGS?

III. WAS THE COURT OF APPEALS CORRECT IN HOLDING THAT WAYNE COUNTY COULD BE HELD LIABLE FOR THE ACTIONS OF THE SHERIFF BECAUSE THE COUNTY FINANCES THE SHERIFF'S DEPARTMENT, THE SHERIFF IS ELECTED BY COUNTY VOTERS AND/OR BECAUSE THE SHERIFF MAKES POLICE POLICY FOR THE COUNTY?

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Salvatore Marchese, respectfully submits that the Petition for a Writ of Certiorari should be denied.

OPINIONS BELOW

The decision of the Court of Appeals is reported as *Marchese* v *Lucas*, 758 F.2d 181 (6th Cir. 1985). The Order denying the petition for rehearing *en banc*, which is not reported, was filed July 3, 1985. The District Court's Order of Judgment, which is dated May 26, 1982, is also unpublished.[1]

COUNTER-STATEMENT OF THE CASE

Petitioners would have this Court believe not only that Respondent, Salvatore Marchese, was beaten in merely an "isolated incident" of police misconduct, but that this case is factually indistinguishable from *Oklahoma City* v *Tuttle*, 472 U.S. , 105 S.Ct. 2247, 85 L.Ed.2d 791 (1985). Nei-

[1] Citations to the Opinions below are to the Appendix to the Petition for a Writ of Certiorari and are designated as A . Citations to the record below are to the Joint Appendix in the Sixth Circuit and are designated as J.App. .

ther proposition could be further from the truth. To begin with, the Court of Appeals squarely stated, at the outset of its Opinion, that "[Respondent] was *twice* beaten severely while in the custody and complete control of Sheriff's officers." [A. p.2a, emphasis added]. The overwhelming lack of similarity between the situation in *Tuttle*, in which a rookie police officer made a split-second decision to shoot an alleged robbery suspect, and the facts of the instant case will become readily apparent in a moment.

Taking the facts in the light most favorable to the Respondent, on May 14, 1976, Salvatore Marchese, a heroin addict, was pulled over by a Wayne County Sheriff's Deputy in a suburban Detroit park. The deputy, Edward Swamba, ordered Marchese out of his car, and Deputy Swamba proceeded to pat him down and ask for identification. When Marchese reached back into his car to retrieve his indentification, a struggle ensued during which Marchese pointed a gun at Deputy Swamba. Shortly thereafter, additional Sheriff's deputies arrived at the scene, and they assisted Swamba in securing the gun from Marchese. One such deputy, Frank Siemienski, handcuffed Marchese and placed him in the back of his patrol car.

As Deputy Siemienski was transporting Marchese back to the Sheriff's Road Patrol Station, he told Marchese that "they had something waiting" for him at the station [J. App. p. 220]. Upon his arrival, 10-15 deputies were in the parking lot waiting for him. Marchese became frightened for his safety and tried to run. The deputies quickly apprehended him and dragged him back toward the station by his hair. As Marchese was being dragged by his hair, the other deputies kicked, punched and verbally threatened him. Among other epithets, they called him a "fucking dirty cop killer", and they told him they were "going to get" him [J. App. p. 221].

Shortly thereafter, the deputies booked him and placed him in a cell. Subsequently, Kenneth Mogill, a criminal attorney, visited Marchese at the station, and while he was there he made notes of the injuries which Marchese had

sustained. Later that night, after the shift change, Marchese was lying in his cell trying to sleep. He heard the jingling of keys, and a deputy let someone into his cell.[2] The person who entered his cell dragged him off the bench and began hitting him with a hard object in the face and chest. When Marchese yelled out, he heard laughter coming from outside the corridor. The beating lasted quite a few minutes, while the assailant continually punched Marchese with some hard object. Finally, the deputy came back to retrieve the person who had been beating Marchese, and as they walked away all Marchese heard was chuckling [J. App. p. 226].

The next morning, when Detective Larry Patterson, who was in charge of the criminal matter, came to get Marchese for his arraignment, he looked at Marchese and asked him what had happened. Marchese informed him that a deputy had beaten him up, but Patterson did not reply. At Marchese's arraignment, Kenneth Mogill, angered by Marchese's worsened physical appearance, placed his observations and objections on the court record. Mogill testified in the instant case that he had brought to the state court's attention the fact that Marchese's injuries the day before (May 14, 1976) did not include a terrible black eye, a swollen mouth and blood all over his shirt, and that he had apparently sustained these injuries while in the custody of the Wayne County Sheriff.[3] In response, a state District Court Judge ordered Detective Patterson to initiate an investigation into how Marchese sustained his injuries. Patterson agreed to conduct an investigation. However, the evidence adduced at trial revealed that no such investigation ever took place.

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[2] Marchese testified that it was too dark in his cell to see anything. He did know that it was approximately midnight, however, because during the subsequent nights he spent in confinement at the facility he learned that the shifts changed at 11:00 p.m.

[3] Marchese's injuries also included a deviated septum, badly swollen wrists (one of which was fractured slightly), having his jaw knocked out of place, and numerous bruises and lacerations.

At trial, the evidence showed that Lieutenant Dennis McLogan, a 15 year veteran in May, 1976, was the commander in charge of the Road Patrol Station's midnight shift on May 14 and 15, 1976. His assistant that night was Sergeant Jack Robinson, a 13 year veteran in May, 1976. Lieutenant McLogan had final responsibility during the midnight shift for any problems with prisoners, the keys to the cell block and any errors that occurred. Lieutenant McLogan also testified that he identified himself with the interests and policies of the Sheriff's Department [J. App. p. 314]. Lieutenant McLogan and Sergeant Robinson were located at the front desk, in an area where they spent approximately 90% of their time.

From their work area, these two command officers supervised the operation of the Road Patrol Station. They not only had possession and control of the keys to the cell block at all times, but they could hear almost all noise originating in the cell block area. Sergeant Robinson testified that he could even hear a "whisper for help" [J. App. pp. 281-282]. Moreover, the keys to the cell block and the key ring were large, heavy and made of brass, and they were quite noisy when in use. Lieutenant McLogan and Sergeant Robinson contended at trial, however, that they checked on Marchese periodically during the night and never observed any marks on him or signs of injury. They also testified that they were unaware of anyone entering Marchese's cell that night for any reason.

Yet both command officers were very much aware of Marchese's presence. They knew, along with virtually every Sheriff's deputy on duty that night, that Marchese had pointed a gun at a brother officer earlier in the day. Lieutenant McLogan noted that "there was an air of hostility" toward Marchese among the officers as a result of the Marchese/Swamba incident [J. App. p. 333]. In fact, Deputy Siemienski, one of the original arresting officers, admitted under oath that Detective Patterson had told him that Marchese "was worked over" the previous night [J. App. p. 375].

Aside from these specific incidents in which Wayne County Sheriff's deputies beat up Salvatore Marchese, however, virtually every officer who testified had witnessed prior acts of prisoner abuse by Sheriff's deputies. Most significantly, Lieutenant McLogan, who identified himself with the interest and policies of the Sheriff's Department, testified that although he has seen officers use excessive force against prisoners, he has never reported it [J. App. p. 336]. Lieutenant McLogan also stated that "officers are reluctant to rat on each other" and that "[n]o one wants to put the finger on a fellow officer" [J. App. p. 333]. Officer Laurence Alcorn lent persuasive additional support to Lieutenant McLogan's proposition by stating, "[i]f I went and beat a man, I sure wouldn't tell anybody" [J. App. p. 419]. Accordingly, even if Detective Patterson had attempted to conduct an investigation (none of the officers who testified, nor Mogill nor Marchese were ever asked by anyone from the Sheriff's Department to give statements about the beatings), it is doubtful he would have discovered anything from any of the officers. Finally, as the Court of Appeals found with regard to Respondent's allegations that the Sheriff's Department has failed to properly train its force:

> "Deputy Sieminski, Officer Alcorn, and Sergeant Robinson all testified that, at the time of the incidents in question, they had not received any training in the care, treatment and handling of prisoners in their custody. Robinson testified that he did receive such training in 1982, six years after Marchese was beaten." [A. pp. 21-22a].

REASONS FOR DENYING THE WRIT

Petitioners have managed to ignore the most salient facts adduced at trial, many of which, as the Court of Appeals noted, came "from the Defendants' side of the case" [A. p. 6a], in their vain attempt to pin the label "single isolated incident" on the instant case. The Court of Appeals made it abundantly clear that it did not base its holding on any injuries Marchese sustained at the scene of his arrest.

Rather, they only found Defendants liable for the two subsequent beatings, one of which occurred as Marchese was dragged into the Road Patrol Station, and the other as he attempted to sleep in his jail cell [A. p. 3a]. Moreover, virtually every officer who testified at trial had witnessed prior acts of prisoner abuse by Sheriff's deputies, but no one had ever reported any such acts. Neither beating to which Marchese was subjected was isolated. To the contrary, they were thoroughly orchestrated events carried out with the approval of supervisory, commanding officers in retaliation for an apparently life-threatening assault upon a brother officer. The evidence thus overwhelmingly supports and confirms the Court of Appeals' holding that Wayne County and its Sheriff could be held liable either because of the Sheriff's prior failure to train and discipline his force, or by ratification of the Marchese beatings through its failure to investigate and punish the offending officers.

None of the cases cited in Petitioners' Brief are dispositive in resolving the questions presented by this appeal, but all of them either support the Court of Appeals' holding or are completely distinguishable. In *Oklahoma City* v *Tuttle*, 472 U.S. ____, 105 S.Ct. 2247, 85 L.Ed.2d 791 (1985), although this Court took a "small but necessary step" toward defining the contours of municipal immunity under 42 U.S.C. §1983, 105 S.Ct. at 2429, it did so in the context of what was truly a single, isolated incident. In *Tuttle*, a "low-level police officer", 105 S.Ct. at 2440, n. 5 (Brennan, J., concurring), acting alone, shot and killed an alleged robbery suspect during a momentary pursuit, on foot, outside a bar. As Justice Rehnquist noted in his plurality opinion, to impose liability under such circumstances "would be to impose it simply because the municipality hired 'one bad apple'." 105 S.Ct. at 2435. Similarly, in *Rymer* v *Davis*, 754 F.2d 198 (6th Cir. 1985), *vacated and remanded sub nom. City of Shepherdsville* v *Rymer*, 472 U.S. ____, 105 S.Ct. 3518, 75 L.Ed.2d 791 (1985), a lone city police officer beat and kicked the plaintiff truck driver during an arrest on a highway. This Court vacated the Circuit Court's decision

upholding §1983 liability against the city in *Rymer* and remanded it for further consideration in light of the *Tuttle* opinion.

Significantly, the *Tuttle* opinion was announced a full month before the Sixth Circuit issued its order denying Petitioners' petition for rehearing *en banc* in the instant case [A. pp. 21-22a]. Because Petitioners had immediately submitted the *Tuttle* opinion to the Court as — they contended — conclusive authority before rehearing was denied, it can safely be stated that the Sixth Circuit has already considered the instant case in light of *Tuttle* and determined that no decisional change is warranted.

Neither can the Sixth Circuit's decision in *Pembauer* v *City of Cincinnati*, 746 F.2d 337 (6th Cir. 1984) nor this Court's granting of the writ of certiorari, ____ U.S. ____, 105 S.Ct. 3475, 85 L.Ed.2d ____ (1985), be regarded as controling authority either, on the issue of whether the instant case was wrongly decided on single incident grounds. In *Pembauer*, police officers for the City of Cincinnati and Sheriff's deputies for Hamilton County broke down a doctor's office door in an effort to serve capias warrants on two of the doctor's employees. Apparently, the doctor was injured[4] during the officers' entry onto his premises. The City Police Chief testified that the policy and past practice of his department was to use whatever force was necessary to serves a capias. Because the court could not determine if the policy identified by the police chief was the cause of Dr. Pembauer's injury, it remanded the case to the district court with instructions to make that determination.

In addition, the court upheld the district court's decision to dismiss Hamilton County as a defendant on the grounds that a "single, discrete decision" by the county prosecutor to serve the capiases was insufficient to establish that the

[4] There is no mention in the court's opinion as to what injury Dr. Pembauer allegedly sustained.

prosecutor or sheriff was implementing a governmental policy. 746 F.2d at 341. Thus, *Pembauer*, like *Tuttle*, involved a single, isolated incident which may or may not have been caused by an official policy. That is simply not the situation in the instant case. Marchese was neither injured in an isolated incident, nor by a single, discrete decision. Rather, his severe beatings were administered pursuant to a carefully crafted, elaborate and widespread policy of "rough justice" administered to those perceived to have threatened the life of a fellow officer.

Petitioners' reliance on *Hays* v *Jefferson County*, 668 F.2d 869 (6th Cir. 1982), *cert. denied*, 459 U.S. 833, 103 S.Ct. 75, 74 L.Ed.2d 73 (1983) is also misplaced. In *Hays*, the issue was whether plaintiffs, who were beaten by police officers trying to disperse a crowd of demonstrators at a shopping mall, had asserted a valid §1983 claim against the county for defendants' "negligent training, supervision, and control of unidentified officers." 668 F.2d at 871. The Sixth Circuit's holding in *Hays*, that plaintiffs could not prevail on a §1983 claim predicted on negligence, was soundly rejected by this Court in *Parratt* v *Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981).

Petitioners have further directed this Court to a "laundry list" of opinions from other circuits in support of its claim that somehow the instant case was wrongly decided [Petitioners' Brief, p. 12, n.3]. However, while a quick review of those opinions indicates that they do, in fact, reject the "single or isolated incident" as a basis for §1983 liability, not one of them involves more than a single, isolated incident of police misconduct. The following examples are illustrative. *Gilmere* v *City of Atlanta*, 737 F.2d 894 (11th Cir. 1984) [two low-level police officers responding to a run, beat and shot plaintiff's decedent during a struggle on the street]; *Cowdrey* v *City of Eastborough*, 730 F.2d 1376 (10th Cir. 1984) [two low-level police officers stopped arrestee on street, and arrestee sustained injuries during struggle with one police officer]; *Wellington* v *Daniels*, 717 F.2d 932 (4th Cir. 1983)

[sole low-level police officer struck plaintiff with Kel-lite causing plaintiff to suffer body paralysis]; and *Languirand* v *Hayden*, 717 F.2d 220 (5th Cir. 1983) [sole low-level police officer investigating call shot suspected prowler in neck]. Accordingly, the cases from other circuits cited by Petitioners do not have any application, and therefore, do not create a conflict with the instant decision by the Sixth Circuit.

THE COURT OF APPEALS CORRECTLY DECIDED THAT THE EVIDENCE ADDUCED AT TRIAL, WHICH PROVED COMPLICITY, IF NOT INSTIGATION, BY SUPERVISORY, COMMAND OFFICERS IN THE BEATINGS OF RESPONDENT, ESTABLISHED POLICIES OF (1) TOLERATING ABUSE OF PRISONERS WHO MAKE LIFE-THREATENING ASSAULTS ON BROTHER OFFICERS AND (2) FAILING TO INVESTIGATE OR COVERING UP ALLEGATIONS THAT SUCH BEATINGS OCCUR.

In *Monell* v *Department of Social Services*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 11 (1978), this Court held that local governments may be sued for constitutional deprivations visited pursuant to governmental custom, even though such custom has not received formal approval through the body's official decision-making channels. As this Court stated:

> "We conclude, therefore, that a local government may not be sued under §1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under §1983." 436 U.S. at 694.

This Court expanded on what "policy" means in *Tuttle*, *supra*, by stating that, "[a]t the very least there must be an

affirmative link between the policy and the particular constitutional violation alleged." 105 S.Ct. at 2436. Justice Rehnquist, who wrote the plurality opinion, also noted that "[r]espondent did not claim in the district court that Oklahoma City had a 'custom' or 'policy' of authorizing its police force to use excessive force in the apprehension of suspected criminals, . . ." *Id.* at 2434. Rather, respondent's sole theory of responsibility was that Oklahoma City had a "policy" which resulted in inadequately trained police officers, and that this "policy" resulted in the shooting death of respondent's husband. *Id.*

Applying *Monell* and *Tuttle* to the facts of the instant case, the evidence overwhelmingly mandates that this Court deny the Petition for Writ of Certiorari. Not only was Marchese beaten by a virtual mob of Sheriff's deputies as he was dragged, with his arms handcuffed behind his back, into the Road Patrol Station, but he was also viciously beaten several hours later, after a new shift had reported for duty, in his jail cell with full approval and knowledge of the commanding officers. From the moment of his arrest, Marchese was repeatedly threatened and told by Sheriff's deputies that they were "going to get" him for what he had done.

Lieutenant McLogan, who was the commanding officer in charge of the station at the time of the second beating, testified that he identified himself with the interests and policies of the Sheriff's department. Yet not only was he aware of the "air of hostility" towards Marchese that night, but he clearly knew of and perhaps instigated the beating of Marchese in his cell. Lieutenant McLogan further admitted that despite having witnessed deputies use excessive force against prisoners in the past, he had never reported any of it. Moreover, every other officer who testified echoed McLogan's practice, and Officer Alcorn went so far as to state that if he beat a man, he "sure wouldn't tell anybody" [J. App. p. 419]. Clearly, Marchese presented sufficient evidence to establish that Petitioners had a policy of encourag-

ing and subsequently covering up abuse of prisoners who had made life-threatening assaults on brother officers.

This evidence was reinforced by substantial additional evidence as well. Despite the fact that a state District Court Judge ordered Detective Patterson to conduct an investigation into Marchese's beatings, no investigation was ever conducted. In fact, the evidence indicated that Detective Patterson sought more to cover up the beating than to uncover who was responsible.[5] What is particularly shocking about Petitioners' failure to investigate is that Detective Patterson, who was in charge of this case, believed that the beatings took place. He told Deputy Siemienski that Marchese had been "worked over" [J. App. p. 375]. Additional evidence further revealed that Sergeant Robinson, Deputy Siemienski and Officer Alcorn had not received any training in the care, treatment and handling of prisoners in their custody at the time of Marchese's beatings, and each had been employed as a Deputy Sheriff for many years.

PETITIONERS' FAILURE TO OBJECT IN ANY WAY TO THE SINGLE INCIDENT JURY INSTRUCTION GIVEN AT TRIAL UNTIL FILING THEIR PETITION FOR A WRIT OF CERTIORARI CONSTITUTES A WAIVER OF THEIR RIGHT TO OBJECT UNDER FEDERAL RULE OF CIVIL PROCEDURE 51.

Rule 51 of the Federal Rules of Civil Procedure states, in pertinent part:

> "No party may assign as error the giving or the failure to give an instruction unless he objects thereto before

[5] On May 17, 1976, two days after the midnight beating, Detective Patterson asked Lieutenant McLogan and Sergeant Robinson to indicate in writing that they had checked on Marchese during the night and that he was fine. Since the most serious injuries sustained by Marchese occurred during the second beating *in his cell* at midnight, the documentation requested by Patterson was intended to undermine the credibility of one of the more outrageous of a series of outrageous police practices proven at the trial of this case.

> the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection."

The intent of Rule 51 is clear. If a party fails to object at trial, that party cannot later claim that the trial court erred in issuing jury instructions. In the instant case, Petitioners never raised any objection to the "single incident" jury instruction given at trial until filing its petition in this Court. Moreover, the first time Petitioners ever made a claim that either the district court or Court of Appeals had erred on the grounds that the instant case was based on a single incident was in their Petition for Rehearing *En Banc*. Respondent noted in his Brief in Opposition at that time that because Petitioners had failed to raise this defense prior to reaching that stage in the proceedings, they had waived their right to have the Sixth Circuit review that issue.

In *Tuttle, supra,* Justice Rehnquist specifically addressed the identical issue by stating:

> "Indeed, respondent's argument might have prevailed had it been made to the Court of Appeals . . . . Non-jurisdictional defects of this sort should be brought *no later* than in respondent's brief in opposition to the petition for certiorari; if not, we consider it within our discretion to deem the defect waived." 105 S.Ct. at 2432.

Accordingly, because petitioners failed to object to the single incident jury instruction prior to filing their Petition for Certiorari, and because Respondent is now timely raising his opposition to Petitioners' belated attempt to avoid the commands of Rule 51, Respondent submits that this Court must find that Petitioners cannot now claim as error the trial court's giving of the single incident instruction.

THE COURT OF APPEALS CORRECTLY FOUND THAT WAYNE COUNTY COULD BE HELD LIABLE FOR THE ACTIONS OF THE SHERIFF BECAUSE THE COUNTY FINANCES THE SHERIFF'S DEPARTMENT, THE SHERIFF IS ELECTED BY COUNTY VOTERS AND/OR BECAUSE THE SHERIFF MAKES POLICE POLICY FOR THE COUNTY.

The decision by the Court of Appeals rendering Wayne County liable for Sheriff Lucas' official actions is directly supported by another Sixth Circuit panel's opinion in *Pembauer* v *City of Cincinnati, supra. In Pembauer,* the appellate court found that the district court had incorrectly decided that, because the Hamilton County Board of Commissioners did not directly control the sheriff, he was not a county official. The *Pembauer* court had looked to virtually the identical factors as the court in the instant case in making the determination that the county could be liable under §1983 for those acts of the sheriff which represent official policy. Among other similar factors, the *Pembauer* court noted that the sheriff is elected by county voters, serves as the chief law enforcement officer for the county, submits his budget to the county, and receives all funding through the county. As the court stated, "we believe it is obvious that the sheriff is a county official." 746 F.2d at 341. Because Sheriff Lucas in the instant case meets all of the *Pembauer* criteria, the Sixth Circuit correctly concluded that *Brandon* v *Holt,* 469 U.S. , 105 S.Ct. 873, 83 L.Ed.2d 878 (1985) compelled a finding that the County be held liable for Sheriff Lucas' official actions.

In support of the proposition that Wayne County can never be held liable for the acts of the Sheriff, Petitioners have cited as authority two Supreme Court cases decided long before *Monroe* v *Pape,* 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961) even appeared on the horizon. *Forsyth* v *City of Hammond,* 166 U.S. 506, 17 S.Ct. 665, 41 L.Ed. 1095 (1897) is clearly distinguishable from the instant case. In

Forsyth, there was a dispute as to whether the city could annex lands belonging to the plaintiff. The case involved a purely local dispute, and it did not involve any federal laws. Similarly, although *Highland Farms Dairy* v *Agnew*, 300 U.S. 608, 57 S.Ct. 549, 81 L.Ed. 835 (1937) did involve a challenge against the Virginia "Milk and Cream Act" as unconstitutional under both the Virginia and United States Constitutions, the court specifically stated that the United States Constitution "had no voice upon the subject". 300 S.Ct. at 612. Clearly, Petitioners have been unable to advance any support for their proposition which, if carried to its logical conclusion, would allow a state legislature to override Congress' ability to safeguard equal protection of constitutional rights for all citizens.

CONCLUSION

Respondent respectfully requests that this Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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Dated: October 23, 1985